Laborers' International Union of North America, Local No. 118, AFL-CIO *and* Ronald Huber d/b/a Huber Masonry and International Union of Operating Engineers, Local 150, AFL-CIO.
Case 13-CD-299

March 31, 1982

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Ronald Huber d/b/a Huber Masonry, herein called the Employer, alleging that Laborers' International Union of North America, Local No. 118, AFL-CIO, herein called Local 118, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by International Union of Operating Engineers, Local 150, AFL-CIO, herein called Local 150.

Pursuant to notice, a hearing was held before Hearing Officer Alan Hellman on September 9 and 21, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, Local 150 and the Employer timely filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a sole proprietor with its principal place of business in Lake Zurich, Illinois, is engaged in the business of masonry work. During the past calendar or fiscal year, a representative period, the Employer received masonry products valued in excess of $50,000 from suppliers in the State of Illinois who received those products directly from points located outside the State of Illinois.

We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 118 and Local 150 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The work in dispute is the operation of a forklift in the loading and unloading of masonry supplies and materials at the Woodfield Business Center in Schaumburg, Illinois.

B. *Background and Facts of the Dispute*

Soon after July 4, 1981,[1] the Employer commenced its operations at the Woodfield Business Center, and assigned the disputed work to an employee represented by Local 118. On July 23, the Employer received a telephone call from a representative of Local 150, who indicated that Local 150 would picket the jobsite if the work were not assigned to an employee whom it represented. Local 150 has continuously picketed the jobsite since on or about July 26. After the commencement of the picketing, but before August 17, the Employer spoke with a business agent from Local 118 who informed the Employer that the work should be performed by a laborer. On August 17, the Employer received a letter from Local 118 which indicated that, if the Employer assigned the work "in any manner inconsistent with the current assignment to laborers," then Local 118 would have "no alternative but to engage in picketing."

C. *Contentions of the Parties*

Local 150 contends that all of the parties are bound to an agreed-upon method for the adjustment of the dispute. Local 150 argues that the parties have agreed, through either their collective-bargaining agreements or other agreements, to submit this dispute to the Joint Conference Board, hereinafter referred to as the JCB, which was established by the Chicago Building Trades Council and the Construction Employers Association.

The Employer contends that the disputed work should be assigned to its employees represented by Local 118, based upon employer preference, economy and efficiency of operation, safety, skills, the Employer's past practice, and the applicable collective-bargaining agreements. The Employer argues that there is no agreed-upon method for adjusting

[1] Unless otherwise specified, all dates herein refer to 1981.

the dispute, and that it is not bound to submit the dispute to the JCB.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated and (2) the parties do not have an agreed-upon method for the voluntary settlement of the dispute.

With respect to the former issue, it is undisputed that on August 17 the Employer received a letter from Local 118 which indicated that Local 118 would have no alternative but to engage in picketing if the Employer made an assignment of the disputed work in any manner inconsistent with its current assignment to a laborer. We therefore find that there is reasonable cause to believe that Local 118 violated Section 8(b)(4)(D) of the Act.

However, we find for the reasons stated below that the parties have agreed upon a method for the voluntary adjustment of the dispute, and we shall order that the notice of hearing be quashed.

The Chicago Building Trades Council, a local council of the Building Trades Department of the AFL–CIO, and the Construction Employers Association, an umbrella group of eight construction associations, are parties to an agreement known as the standard agreement.[2] The standard agreement created the JCB, which is designed to decide jurisdictional disputes arising between parties bound to the agreement. Article IV of the standard agreement provides:

> A Joint Conference Board is hereby created by agreement between the Association and the Council, which shall be binding upon the members and affiliates of each, and it is hereby agreed by the parties hereto, together with their members and affiliates, that they will recognize the authority of said Joint Conference Board and that its decisions shall be final and binding upon them.

In pertinent part, article V of the standard agreement provides:

> Should a jurisdictional dispute arise between or among any members or affiliates of the parties hereto, or between or among the members or affiliates of the parties hereto and some other body of employers or employees, which dispute the parties involved are unable to adjust or settle, said dispute shall immediately be referred to the Joint Conference Board. Should same not be so referred by either or both of the interested parties, the Joint Conference Board may, upon its own initiative, or at the request of others interested, take up such dispute and decide same and its decision shall be final and binding upon the parties hereto and upon their members and affiliates.

Under article XV, the standard agreement applies "only to work performed within Cook County, Illinois."[3]

We find that both Local 150 and Local 118 are bound by the standard agreement. In this connection we note that article IV provides that the agreement creating the JCB shall be binding upon "members and affiliates" of the parties, and that the parties and their "members and affiliates" will recognize the JCB's authority. Article V provides that jurisdictional disputes between or among "members and affiliates" shall be referred to the JCB. The record discloses that Local 150 is directly affiliated with the Chicago Building Trades Council. The record further discloses that the Construction and General Laborers District Council of Chicago and Vicinity, which represents and encompasses Local 118 and other locals, is a member of the Chicago Building Trades Council. We therefore find that, through their affiliation with the Chicago Building Trades Council, both Local 150 and Local 118 are bound under the standard agreement to submit this dispute to the JCB.[4]

We also find that Local 150 and Local 118 are bound to the standard agreement through their own collective-bargaining contracts. Local 150 and the Mid-America Regional Bargaining Association, hereinafter referred to as MARBA, are parties to a master agreement known as the Illinois building agreement. Article VIII, section 4, of that contract provides that, with respect to jurisdictional disputes arising within Cook County, it is "understood and agreed that the parties to this Agreement shall be bound to the provisions of the Standard Agreement establishing the Joint Conference Board as if set forth in full herein." Furthermore, the Construction and General Laborers District Council of Chicago and Vicinity, on behalf of Local 118 and other locals, has also entered into a master agreement with MARBA. That agreement expressly provides that the "Standard Form of Agreement"[5]

[2] The record discloses that the current standard agreement will remain in effect until 1983. The agreement was first reached in 1913.

[3] The parties have stipulated that the village of Schaumburg, where the disputed work is being performed, is located within Cook County, Illinois.

[4] We also note that art. XVI of the constitution and bylaws of the Chicago Building Trades Council provides that all jurisdictional disputes between local unions, district councils, or conferences affiliated with the Council shall be adjusted in accordance with the provisions of the standard agreement establishing the JCB.

[5] At the hearing, uncontradicted testimony established that the standard agreement is also known as the standard form of agreement.

is "Used and Made Part of this Agreement." We therefore find that, through the clear language of their collective-bargaining agreements, Local 150 and Local 118 have agreed to submit jurisdictional disputes arising within Cook County to the JCB.[6]

The record further discloses that the Employer is bound to the standard agreement through its contracts with both Local 150 and Local 118. On March 27, 1980, the Employer entered into a memorandum of agreement with Local 150. The memorandum expressly adopted the existing master agreement between Local 150 and MARBA which, as noted above, provides in article VIII, section 4, that jurisdictional disputes shall be submitted to the JCB. The memorandum of agreement also provides that it will remain in effect from year to year and that it will adopt any subsequent master agreements between Local 150 and MARBA, unless either party gives notice of its desire to amend or terminate the memorandum of agreement 3 months prior to the expiration of the master agreement. No such notice has been given, and the master agreement has been extended until 1984. We therefore find that the memorandum of agreement is still in effect. In view of the foregoing, we find that, by signing the memorandum of agreement with Local 150, the Employer has agreed to submit this jurisdictional dispute to the JCB.

On September 4, 1980, the Employer also signed a memorandum of agreement with the Construction and General Laborers District Council of Chicago and Vicinity, which, as noted in the memorandum of agreement, represents and encompasses Local 118 and other locals. The memorandum expressly adopts the master agreement, referred to above, between the General Laborers District Council and the Builders Associations of Chicago and Vicinity and other associations.[7] As noted, the master agreement contains a provision expressly incorporating the standard agreement. The memorandum of agreement provides that it shall remain in effect until May 31, 1981, and that it shall continue thereafter unless either party gives 60 days' written notice of its desire to modify or amend the memorandum. It also provides that, in the absence of such notice, the parties agree to be bound by the master agreement and to extend the memorandum of agreement for the life of the master agreement. There is no evidence that either of the parties gave written notice, and the record discloses that the master agreement has been extended to May 31, 1983. Therefore the memorandum of agreement is still in effect. In view of the foregoing, we find that, by signing the memorandum of agreement with the General Laborers District Council of Chicago and Vicinity, the Employer has also agreed to be bound to the standard agreement's provision for the submission of jurisdictional disputes to the JCB.[8] Further, in view of its agreements with both Local 150 and Local 118, we find that the Employer is bound to the standard agreement even though it is not a member of the Construction Employers Association.

Therefore, since all of the parties are bound to submit this dispute to the JCB, we shall quash the notice of hearing issued herein.

ORDER

It is hereby ordered that the notice of hearing issued in this proceeding be, and it is hereby is, quashed.

---

[6] The most recent Illinois building agreement became effective on July 1, 1981, and will expire in 3 years. The record discloses that the master agreement of the General Laborers District Council has been extended until May 31, 1983. The provisions governing jurisdictional disputes remain unchanged in both agreements.

[7] Those associations were represented by MARBA in the negotiations.

[8] Member Jenkins notes that the provisions of the standard agreement do not preclude the Employer from invoking the processes of the JCB. Art. V of the standard agreement provides that, if a jurisdictional dispute arises between members or affiliates of the parties to the agreement, or between members or affiliates of the parties and "some other body of employers or employees," then the jurisdictional dispute "shall immediately be referred to the Joint Conference Board." This provision clearly does not prohibit employers from referring disputes to the JCB. Further, art. V also provides that, if a dispute is not referred to the JCB, the JCB may on its own initiative, "or at the request of others interested," proceed to decide the dispute. It seems clear that the Employer would also be able to initiate the processes of the JCB under this language.

In view of the above and all of the evidence in the record, Member Jenkins finds that this case is distinguishable from those cases in which he dissented from the majority's decision to quash the notice of hearing. See, e.g., *International Union of Operating Engineers, Local 17, 17A, 17B (Sullivan and Humes)*, 254 NLRB 71 (1981); *Local 825, Branches A, B, C, D, International Union of Operating Engineers, AFL-CIO (Bafill Construction Corp.)*, 242 NLRB 673 (1979); *United Mine Workers of America, Local Union 1269 (Ritchey Trucking, Inc., Barnes & Tucker Coal Co. and Davis Trucking, Inc.)*, 241 NLRB 231 (1979); *Glass Workers Local No. 740, International Brotherhood of Painters and Allied Trades, AFL-CIO (Tom Benson Glass Co., Inc.)*, 224 NLRB 1155 (1976); *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 447, AFL-CIO (Capital Air Conditioning, Inc.)*, 224 NLRB 985 (1976). In those cases Member Jenkins found that there was no agreed-upon method within the meaning of the Act. The asserted agreements either precluded the employer from initiating the dispute resolution processes, failed to provide for the resolution of the dispute where the disputed work had already been completed, covered only wages, hours, and working conditions, or involved a condition imposed unilaterally by a general contractor upon a subcontractor. Since Member Jenkins finds no evidence that these circumstances are present in the instant case, he agrees that the notice of hearing should be quashed.